

REMARKS**I. Overview**

Claims 1, 2, 4-11 are pending in the present application. Claims 1 and 4-6 have been amended, and claim 3 has been canceled herein. Applicant respectfully requests reconsideration of the claims in view of the following remarks.

The issues raised by the Examiner in the current Office Action dated June 8, 2009 are as follows:

- The drawings are objected to under 37 C.F.R. § 1.83(a) as not showing every feature;
- Claims 1-3 and 6-10 have been rejected under 35 U.S.C. § 102(b) as assertedly being anticipated by U.S. Patent No. 5,732,213 to Gessel, *et al.* (hereinafter “Gessel”); and
- Claims 4 and 5 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Gessel in view of U.S. Patent No. 6,381,721 to Warren, (hereinafter “Warren”).

Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the amendments and remarks presented herein.

II. Amendments to the Drawings

Figure 6 has been amended and a new Figure 6 on Replacement Sheet 3/3 is included herewith to replace original Figure 6. Figure 6 has been amended to illustrate transmission media 14 as optical transmission media and to illustrate switch 12b as an optical switch connected to the optical transmission media.

No new matter has been added. Support for the amended Figure 6 can be found in the original application (published as US 2002/0067743 A1) at least in paragraphs [0033], [0039], and [0040].

III. Amendments to the Claims

Claims 1 and 4-6 have been amended. No new matter has been added. Support for the amendments to the claims can be found in the original application (published as US 2002/0067743 A1) at least in paragraphs [0033], [0039], and [0040], and in Figure 6.

IV. Rejections under 35 U.S.C. § 102(b)

Independent claims 1 and 6 stand rejected under 35 U.S.C. § 102(b) as assertedly being anticipated by Gessel.

Claims 1 and 6, as amended, recite:

the first layer being a physical layer on an optical transmission medium, and data in the layer that is higher than the first layer comprising electrical signals.

Gessel discloses a system for testing Open Systems Interconnection (OSI) layers 3 through 7. (Abstract). The Gessel system replaces OSI layers 1 and 2 with a Internet socket interface. (*Id.*). The Gessel reference does not disclose using an optical transmission medium for the first layer. Instead, Gessel uses a LAN interface to simulate the first OSI layer. (*Id.*). Accordingly, the Gessel reference does not disclose every element of the pending claims and does not anticipate the claims.

V. Conclusion

Claims 2, 4, 5 and 7-10 depend from independent claims 1 and 6, respectively, and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

Applicant has made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicant's attorney at 214-722-8983 so that such issues may be resolved as expeditiously as possible. No fee is believed due in connection with this filing.

Respectfully submitted,

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Date

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